

**222 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-11255-2021
Date of decision : 15.02.2022**

Gurpreet Singh

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Kulbir Singh Sekhon, Advocate
for the petitioner.

Ms. Sakshi Bakshi, AAG, Punjab.

RAJESH BHARDWAJ, J. (ORAL)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.218 dated 07.09.2019, under Section 376 of the Indian Penal Code, registered at Police Station City Faridkot, District Faridkot.

As per factual matrix of the case, the present FIR was lodged by the prosecutrix (name concealed). The detailed FIR which has been lodged, the sum and substance of the same is that the prosecutrix was already married and she was a mother of two children from her first husband. Her first husband namely, Harpreet Singh died on 05.09.2016 and after his death, she along with her children came back to her parental home at Muktsar. In the vicinity of their residence at Muktsar, the petitioner was also residing. During that course of time, he used to visit their house and thus, they came close to each other. They

started talking on phone and thereafter, petitioner approached the prosecutrix and said that he intended to marry her. They started living together as husband and wife and stayed as such for 5-6 months. It was further alleged that the petitioner Gurpreet Singh promised to take her abroad after marriage. He took the passport of the prosecutrix and that of her children. He performed marriage with her on 28.11.2018 and prepared the affidavits regarding that. After performing the marriage, the relationship between the petitioner and the prosecutrix ran into a rough weather. The differences started cropping in and finally the petitioner and his family started harassing her and she was deserted by the petitioner. The Panchayat was also convened and request was made for rehabilitating the prosecutrix. She requested for returning her passport and certificates but the same were not returned to her, rather she was beaten and threatened by the petitioner. It was alleged that the petitioner had developed physical relationship with the prosecutrix on the assurance of performing marriage and taking her abroad. As she was cheated by the petitioner, it was requested to take a legal action against the accused. In pursuance to the same, the investigation commenced and the petitioner was arrested on 04.11.2020. Thereafter, he approached the learned Additional Sessions Judge, Faridkot for grant of bail, who after hearing counsel for the parties, declined the same vide order dated 04.02.2021. Aggrieved by the same, petitioner approached this Court by way of filing the present petition for grant of regular bail.

Learned counsel for the petitioner vehemently contends that by no stretch of imagination, the present case can be said to have fallen under Section 376 IPC. He submits that the prosecutrix is 34 years of age and mother of two children whereas, the petitioner is 22 years of age and a bachelor. He argued that looking into the allegations of the FIR itself, relationship between the

petitioner and the prosecutrix was totally consented one. The grievance of the prosecutrix is basically started after performing the alleged marriage. He submits that as the relationship is consensual, it is totally a debatable issue whether prosecution of the petitioner under Section 376 IPC is justified or not. He has relied upon the judgment titled as Pramod Suryabhan Pawar Vs. The State of Maharashtra and others (2019) 9 SCC 608. He submits that as per the information, the prosecutrix already stands examined by the trial Court and she has deposed on the same lines as in the FIR. Once the prosecutrix herself admits the petitioner as the husband then the allegations regarding the rape of the prosecutrix loses significance. Even otherwise, as the material witnesses already stand examined, the petitioner cannot be apprehended to tamper with the prosecution evidence and hence, in the overall facts and circumstances, petitioner deserves to be enlarged on bail.

Learned State counsel has placed on record the status report and has argued that there are specific allegations against the petitioner levelled by the prosecutrix. She submits that though, factually it is correct that the prosecutrix was already married, however, petitioner had established the physical relationship with the prosecutrix by cheating. However, she candidly acknowledges that out of 17 prosecution witnesses, 04 material witnesses including the complainant and the prosecutrix already stand examined.

I have heard learned counsel for the parties and perused the records.

Petitioner is behind the bars since 04.11.2020. Admittedly, both the petitioner and the prosecutrix are of the age of majority. Whether in the facts and circumstances of the case, the relationship between the petitioner and prosecutrix was consensual, constituting the offence under Section 376 IPC is

purely a question to be decided by the trial Court on the conclusion of the trial. The material witnesses stand examined. In all there are 17 prosecution witnesses and only 04 witnesses have been examined so far and hence, the trial would take some time in its conclusion. However, in the facts and circumstances of the case, the Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for grant of bail.

In the overall facts and circumstances of the case, it is apparent that the trial of the case will take sufficient time and no useful purpose will be served by keeping the petitioner in custody for such a long time. Keeping in view the abovesaid facts, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

15.02.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No